



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.19926 & 20008 of 2023
and Crl.MP.Nos.13525, 13526, 13577 and 13579 of 2023

Divyesh Palicha

... Petitioner/Accused
in Both Crl.OPs

Vs.

Rajasthan Association TN
Rep.by its Office Manager
M.Sathyanarayan
S/o.Mr.Radhakrishnamurthy
Flat No.O.404, Vidyasagar Oswal Garden
210-212 CB Road, 4th Floor
Korukkupet, Washermanpet
Chennai 600 021.

... Respondent/Complainant
in Both Crl.OPs

Common Prayer: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure to call for the records in STC.Nos.1385 and 1387 of 2023, pending before the learned Fast Track Court IV Metropolitan Magistrate, G.T.Court, Chennai-1 and quash the same.

For Petitioner
(in Both Crl.OPs)

: Mr.Sanjay Pinto

For Respondent
(in Both Crl.OPs)

: Mr.K.Chandru



COMMON ORDER

The issue involved in both these petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2.The respondent has initiated proceedings against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881. According to the respondent, the petitioner had an existing liability towards payment of the balance sale consideration for a property that was sold in favour of the petitioner. Towards that liability, the petitioner issued cheques and when the same was deposited, it was dishonoured and the same resulted in filing two separate complaints. The same has been put to challenge in these petitions.

3.Heard Mr.Sanjay Pinto, learned counsel for the petitioner and Mr.K.Chandru, learned counsel for the respondent.

4.A careful reading of the complaint filed before the Court below shows that the so-called cheque was issued by the petitioner only towards the balance sale consideration that was payable for the property that was sold in favour of the petitioner. There is no dispute that the sale deed was executed in favour of the petitioner on 30.9.2019 and it was registered as D.No.2310 of 2019. It will be relevant to extract some portions in the sale deed hereunder:



Now This Deed of Absolute Sale Witnesseth :

That in pursuant of the above said covenants and in consideration of the sum of Rs.1,15,00,000/- Rupees One Crore and fifteen Lakhs only) paid by the PURCHASER to the vendor in the following manner:

Rs.15,00,001/-	(Rupees Fifteen lacs and one only) was paid by the PURCHASERS to the VENDOR by way of a Cheque bearing No.935616 dated 04/04/2016 of Axis Bank, in favour of M/s. Rajasthani association.
Rs.50,00,000/-	(Rupees Fifty lacs only) was paid by the PURCHASERS to the VENDOR by way of a Cheque bearing No.295352 dated 22/08/2017 of DBS Bank, in favour of M/s. Rajasthani association, issued by Shri.Divyesh Palicha.
Rs.50,00,000/-	(Rupees Fifty lacs only) was paid by the PURCHASERS to the VENDOR by way of a Cheque bearing No.295351 dated 22/08/2017 of DBS Bank, in favour of M/s. Rajasthani association, issued by Shri.Divyesh Palicha.
The Receipt of such sum the Vendor do hereby admit, acknowledge and release the PURCHASER from further payment thereof, the Vendor do hereby convey, grant, sell.	

5.It is clear from the above sale deed that the total sale consideration was fixed at Rs.1.15 crores and this amount was also paid to the respondent. The sale deed itself makes it clear that the entire sale consideration is received and the petitioner stand released from making any further payment towards the



same. This registered document is an uncontrovertible and unimpeachable material of sterling quality. If the sale deed makes it clear that the entire sale consideration has been paid, it is not known as to how the respondent is claiming for excess sale consideration through a separate understanding with the petitioner. The respondent claims that the petitioner promised to pay the extra sale consideration and believing the words of the petitioner, the cheques were deposited and ultimately, it was dishonoured. On the other hand, the petitioner states that even after the payment of the entire sale consideration, the petitioner was taken to the police station on a complaint filed against her and the cheques were forcibly taken away from the petitioner with a letter.

6.It is not necessary for this Court to go into this issue, since it is not germane for the issue that is involved in the present case. The liability is traced by the respondent through the sale transaction. This sale transaction is borne out by the sale deed dated 30.9.2019 which is a registered document and it shows that the entire sale consideration was paid. In view of the same, there is no existing liability for the petitioner to make any further payment towards the sale of the property. If the respondent had taken the risk of collecting a separate payment from the petitioner apart from what has been stated in the sale deed, that cannot be the basis for maintaining a complaint under Section 138 of the Negotiable Instruments Act, 1881. On going through the sale deed, it is clear that there was no existing debt/liability on the part of the petitioner and



therefore, the very complaint that was given against the petitioner is unsustainable.

WEB COPY

7.In the light of the above discussion, the proceedings in STC.Nos.1385 and 1387 of 2023, pending on the file of the learned Fast Track Court IV Metropolitan Magistrate, G.T.Court, Chennai-1, is hereby quashed and both the criminal original petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

15.02.2024

KP

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

Fast Track Court IV Metropolitan Magistrate

G.T.Court, Chennai-1.



WEB COPY



N. ANAND VENKATESH, J.

kp

Crl.O.P.Nos.19926 & 20008 of 2023

15.02.2024